

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MACINIAK-DOMINGUES GONCALVES

AGRA, et al ,

: Docket #:

1:22-cv-10959-ALC

Plaintiffs, :

-against-

:

CENTER FOR BRAIN, MINDS AND

MACHINES AT MASSACHUSETTS INSTITUTE

OF TECHNOLOGY, et al,

: New York, New York

Defendants.

-----:

PROCEEDINGS BEFORE
THE HONORABLE ANDREW L. CARTER, JR
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Pro-Se

Plaintiff:

DR. KAROLINA MARIA

MACINIAK-DOMINGUES GONCALVES AGRA

Mr. PEDRO HENRIQUE

MACINIAK-DOMINGUES GONCALVES AGRA

500 E 63rd Street, Apt. 13F

New York, New York 10065

For Defendant:

SEYFARTH SHAW, LLP

BY: KYLE DONALD WINNICK, ESQ.

DOV KESSELMAN, ESQ.

620 8th Avenue

New York, New York 10018

For Defendant:

PROSKAUER ROSE, LLP

BY: ELISE MICHELLE BLOOM, ESQ.

NOA MICHELLE BADDISH, ESQ.

11 Times Square

New York, New York 10036

Appearances (Continued):

For Defendant: GOODWIN PROCTER, LLP
BY: JENNIFER CHUNIAS, ESQ.
MARCO YU-HIN WONG, ESQ.
620 Eighth Avenue
New York, New York 10018

For Defendant: DOJ-USAO
BY: REBECCA LYNN SALK, ESQ.
86 Chambers Street, 3rd Floor
New York, New York 10007

For Defendant: HUSCH BLACKWELL
BY: SCOTT WARNER, ESQ.
JASON MICHAEL HUSGEN, ESQ.
120 S. Riverside Plaza, Suite 2200
Chicago, IL 60606

For Defendant: SCHILLING LAW, LLC
BY: ANDREW WILLIAM SCHILLING, ESQ.
1345 Avenue of the Americas
Suite 2nd Floor
New York, New York 10105

For Defendant: MORGAN, BROWN & JOY, LLP
BY: GREGORY A. MANOUSOS, ESQ.
CASSANDRA SANTORO FULLER, ESQ.
200 State Street, 11th Floor
Boston, Massachusetts 02109

Transcription Service: Marissa Mignano Transcription
Phone: (631) 813-9335
E-mail:marissamignano@gmail.com

Proceedings recorded by electronic sound recording;
Transcript produced by transcription service

INDEXE X A M I N A T I O N S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-</u> <u>Direct</u>	<u>Re-</u> <u>Cross</u>
None				

E X H I B I T S

<u>Exhibit</u> <u>Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir</u> <u>Dire</u>
None				

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE DEPUTY CLERK: Good afternoon, this is Tara, Judge Carter's deputy. Who just joined the call, please.

MR. WINNICK: Hi. Yes, this is Kyle Winnick for Defendant Boston Children's Hospital.

THE DEPUTY CLERK: And is cocounsel joining you today?

MR. WINNICK: Yes, he should be joining shortly.

THE DEPUTY CLERK: Okay, great.

Good afternoon. This is Tara, Judge Carter's deputy. Who just joined the call, please.

MS. BLOOM: This is Elise Bloom from Proskauer Rose and my colleague, Noa Baddish, will be joining. We represent Rockefeller University. And Ms. Baddish will be handling the conference.

THE DEPUTY CLERK: Thank you. Thank you, Ms. Bloom.

Is there anyone else who joined the videoconference, counsel, whose name I haven't taken as of yet. Thank you.

Good afternoon. This is Tara, Judge Carter's is deputy. Who just joined the call, please.

1 MS. SALK: Hi. This is Rebecca Salk,
2 Assistant US Attorney on behalf of the National
3 Science Foundation.

4 THE DEPUTY CLERK: Thank you, Ms. Salk.

5 Good afternoon. This is Tara, Judge
6 Carter's deputy. Who just joined the call, please?

7 MS. BADDISH: Good afternoon. My name is
8 Noa Baddish. I'm counsel for Defendant Rockefeller
9 University.

10 THE DEPUTY CLERK: Yes. Thank you, Ms.
11 Baddish. Thank you so much.

12 Good afternoon. This is Tara, Judge
13 Carter's deputy. Who just joined the call?

14 MS. CHUNIAS: Jennifer Chunias from Goodwin
15 Proctor.

16 THE DEPUTY CLERK: Thank you, Ms. Chunias.

17 Do you have cocounsel joining you for
18 today?

19 MS. CHUNIAS: I believe Marco Wong from
20 Goodwin Proctor will be on as well.

21 THE DEPUTY CLERK: Thank you.

22 MS. BADDISH: Sorry, this is Noa Baddish
23 again. I believe Elise Bloom will be joining me.

24 MS. BLOOM: Yes, Noa, I'm already on.

25 MS. BADDISH: Oh, okay.

1 THE DEPUTY CLERK: Good afternoon. This is
2 Tara, Judge Carter's deputy. Who just joined the
3 call?

4 MR. WINNICK: Hi, Tara. It's Judge Carter.

5 THE DEPUTY CLERK: Hi, Judge.

6 This is Tara, Judge Carter's deputy. Who
7 just joined call?

8 MR. HARRIS: Hi Tara. It's George for the
9 Court. George Harris.

10 THE DEPUTY CLERK: Thank you. Hi, George.

11 This is Tara, Judge Carter's deputy. Who
12 just joined call, please?

13 MS. WARNER: Good afternoon. This is Scott
14 Warner from Hush, Blackwell. I have an application
15 for admission pro hac vice pending. My colleague
16 Jason Huskin, also from Hush Blackwell, who's
17 admitted in the Southern District of New York,
18 should be joining if he's not already on.

19 THE DEPUTY CLERK: Thank you. Give me your
20 last name one more time, sir.

21 MS. WARNER: Sure. It's Warner,
22 W-A-R-N-E-R.

23 THE DEPUTY CLERK: Thank you, Mr. Warner.

24 MS. WARNER: Thank you.

25 THE DEPUTY CLERK: Good afternoon. This is

1 Tara, Judge Carter's deputy. Who just joined the
2 call, please?

3 MS. KESSELMAN: Hi, this is Dov Kesselman
4 of Seyfarth Shaw on behalf of Boston Children's
5 Hospital.

6 THE DEPUTY CLERK: Thank you, Mr.
7 Kesselman. Your cocounsel, Mr. Winnick, is on the
8 line as well.

9 MS. KESSELMAN: Thank you very much.

10 THE DEPUTY CLERK: Good afternoon. This is
11 Tara, Judge Carter's deputy. Who just joined the
12 call, please?

13 MR. HUSGEN: This is Jason Husgen at Hush
14 Blackwell for Defendants Marine Biological
15 Laboratory and the University of Chicago.

16 THE DEPUTY CLERK: Thank you, sir.

17 Good afternoon. This is Tara, Judge
18 Carter's deputy. Who just joined the call, please?

19 MR. SCHILLING: Hi. This is Andrew
20 Schilling for Harvard University.

21 THE DEPUTY CLERK: Thank you, Mr. Shilling.

22 Will you be having cocounsel joining you
23 today?

24 MR. SCHILLING: Yes, Mr. Greg Manousos will
25 also be joining.

1 THE DEPUTY CLERK: Thank you.

2 This is Tara, Judge Carter's deputy. Who
3 else just joined the call?

4 Good afternoon. This is Tara, Judge
5 Carter's deputy. Who just joined the call, please?

6 MS. AGRA: Hi, good afternoon. It's
7 Karolina and Pedro as plaintiffs.

8 MR. AGRA: Good afternoon. It's Pedro.

9 THE DEPUTY CLERK: Thank you.

10 Mr. Schilling, do we need to wait for your
11 cocounsel before starting?

12 MR. SCHILLING: Yes, please. Mr. Manousos
13 is taking the lead for Harvard.

14 THE DEPUTY CLERK: Understood. Thank you.

15 Good afternoon. This is Tara, Judge
16 Carter's deputy. Who just joined the call, please?

17 MR. MANOUSOS: Yes, this is Gregory
18 Manousos from Morgan, Brown and Joy representing
19 Harvard.

20 THE DEPUTY CLERK: Thank you, Mr. Manousos.
21 Your cocounsel, Mr. Shilling, is on the line
22 already.

23 MR. MANOUSOS: Thank you.

24 THE DEPUTY CLERK: So I just want the
25 parties to know that this conference is being

1 recorded, so each time when you address the Court,
2 if you can state your name prior to speaking. When
3 you are not addressing the Court, please place your
4 phone on mute.

5 This is Tara, Judge Carter's deputy. Just
6 want to double-check, is there anyone on the line
7 who was calling in to participate in today's
8 conference whose name I have not taken as of yet?

9 MS. FULLER: Hi, Cassandra Fuller from
10 Morgan, Brown and Joy, on behalf of Harvard.

11 THE DEPUTY CLERK: Thank you, Ms. Fuller.

12 MS. FULLER: Thank you.

13 THE DEPUTY CLERK: Civil calls for
14 telephonic pre-motion conference in case number
15 22-CV-10959, Maciniak-Domingues, et al. vs. The
16 Center for Brain, et al.

17 Could the plaintiff please state your full
18 names for the record?

19 MS. AGRA: Karolina Maria
20 Maciniak-Domingues Goncalves Agra.

21 MR. AGRA: And Pedro Henrique
22 Maciniak-Domingues Goncalves Agra.

23 THE DEPUTY CLERK: Counsel for Defendant,
24 MIT.

25 MS. CHUNIAS: Good afternoon. Jennifer

1 Chunius from Goodwin Proctor. And I'm joined by my
2 colleague, Marco Wong.

3 THE DEPUTY CLERK: Counsel for the
4 Defendant Harvard University and the President and
5 Fellows of Harvard College.

6 MR. MANOUSOS: Gregory Menusis from Morgan,
7 Brown and Joy.

8 MR. SCHILLING: And Andrew Schilling from
9 Schilling Law.

10 MS. FULLER: Cassandra Fuller, also from
11 Morgan, Brown and Joy.

12 THE DEPUTY CLERK: Would defendant from
13 Boston Children's Hospital?

14 MS. KESSELMAN: Good afternoon. This is
15 Dov Kesselman of Seyfarth Shaw on behalf of Boston
16 Children's Hospital. And with me is my colleague,
17 Kyle Winnick.

18 THE DEPUTY CLERK: Would Defendant Marine
19 Biological Laboratory and the University of Chicago.

20 MR. HUSGEN: This is Jason Husgen, of Hush
21 Blackwell for the University of Chicago and the
22 Marine Biological Laboratory. And I am joined by my
23 colleague, Scott Warner.

24 THE DEPUTY CLERK: Would Defendant
25 Rockefeller University.

1 MS. BADDISH: Noa Baddish from Proskauer
2 Rose.

3 MS. BLOOM: And Elise Bloom from Proskauer
4 Rose.

5 THE DEPUTY CLERK: And for defendant
6 National Science Foundation.

7 MS. SALK: Rebecca Salk, Assistant US
8 Attorney on behalf of the National Science
9 Foundation.

10 THE DEPUTY CLERK: Thank you.

11 THE COURT: Okay, good afternoon. We're
12 here for a premotion conference.

13 I'm not going to be deciding anything in
14 terms of the substantive motions that the defendant
15 wish to file, because the motion haven't been filed
16 yet. I just want to make sure that the pro se
17 plaintiffs understand that the purpose of this
18 hearing today is to make sure that the plaintiffs
19 know what these anticipated motions are and we can
20 figure out how to proceed in an efficient manner.

21 So for the plaintiffs, I know that you're
22 pro se. Have you seen the letters that have been
23 filed by the defendants talking about their
24 anticipated motions to dismiss as well as their
25 motions to transfer this case in the like?

1 MS. AGRA: Your Honor, yes, we've seen the
2 letters and we also submitted the response to the
3 first one submitted by the Defendant Rockefeller
4 University.

5 THE COURT: Okay. So, again, the motion
6 haven't been made yet, and here's what I want to try
7 to do to find out if we can proceed efficiently.

8 My understanding or my assumption would be
9 that you disagree with many of the legal arguments
10 that the defendants are going to make in terms of
11 where we are factually, in terms of what's been put
12 in the complaint. I would like to give you an
13 opportunity to file an amended complaint, if you'd
14 like, to deal with the issues that have been raised
15 by the defendants. And if so, I'll give you some
16 time to file an amended complaint. And after you
17 file the amended complaint, we can set a briefing
18 schedule after that for the defendants to file their
19 motions.

20 So plaintiffs, do you wish to file an
21 amended complaint?

22 MS. AGRA: Yes, we will be willing to file
23 amended complaint. However, we think that at this
24 point, we don't have sufficient information on how
25 to amend and exactly what to amend, because it seems

1 that there is a disagreement about the very basic
2 issue about putting the claims against all and each
3 defendant. So I would appreciate to have guidance
4 in case such a complaint should be amended on how
5 and what are exactly the points of the defendant.
6 Because as far as we see, there are very vague and
7 it can be easily dismissed with the complaint that
8 we already have right now.

9 THE COURT: Well, one of the concerns that
10 the defendants have raised is that the complaint is
11 not a short and plain statement, that the complaint
12 is very, very long. That's one concern that
13 certainly could be potentially cured by amendment.
14 There are also some issues that the defendants have
15 raised about the timeliness of this lawsuit. Those
16 might be things that can be raised, but -- that
17 might be cured by amendment.

18 What I would suggest is that you contact
19 NYLAG, N-Y-L-A-G. They are a group. They're
20 located in the bottom floor of the courthouse in 40
21 Foley Square, and they provide free legal assistance
22 for pro se litigants, and they may be able to help
23 give you some advice on how to amend the complaint
24 and what you should put in an amended complaint. So
25 that's what I would suggest in terms of reaching out

1 to them and discussing that with them. Does that
2 make sense from plaintiffs' perspective.

3 MS. AGRA: Your Honor, so if I can respond
4 to those two points that Your Honor mentioned.
5 First one about short and plain complaint, the
6 complaint is 109 pages, and majority of the pages is
7 the factual allegations consisting of the strict
8 facts --

9 THE COURT: Hold on. Hold on. Hold on.
10 Here's what we're doing, again.

11 What I don't want to do today, I don't want
12 to have an argument over whether or not I should
13 grant their motions or not. The motion haven't been
14 filed. What I'm suggesting is you should talk to
15 NYLAG, N-Y-L-A-G, and see all of the issues that
16 have been raised by the defendants and figure out if
17 you wish to file an amended complaint.

18 If, after discussing that with NYLAG and
19 looking at everything else, you decide not to file
20 an amended complaint, that's fine, but I want to
21 give you that opportunity. But I don't want to have
22 an argument about this now, because, again, the
23 motions haven't been filed yet, and the motion, when
24 they are filed, are going to require some legal
25 argument. And what I'm concerned about right now is

1 trying to make sure that you put forth the best
2 complaint that you can. And that's why I'm
3 suggesting you should talk to NYLAG.

4 Because what I don't want to do is have a
5 situation in which the defendants file these
6 motions, and then after they filed the motions, you
7 say now you wish to file an amended complaint.

8 MS. AGRA: Your Honor, yes, I understand.
9 And, yes, we do agree to proceed as Your Honor
10 suggests, and we will contact first NYLAG.

11 THE COURT: Okay. So I will give you,
12 again, because you're pro se -- and let me just
13 confirm, do you have any legal training at all?

14 MS. AGRA: Your Honor, no, we don't.

15 MR. AGRA: No, we don't.

16 THE COURT: Okay. So I'm going to give you
17 plenty of time to file an amended complaint.

18 But before I do that, let me just check
19 with the defendants. Is there any objection from
20 the defendants -- I guess if anyone has an
21 objection, please speak, if not, you don't need to
22 say anything -- to me giving the pro se plaintiffs
23 an opportunity to file an amended complaint prior to
24 the filing of any motions to dismiss?

25 Okay. I haven't heard anything.

1 So let's set a date for the filing of an
2 amended complaint. Since you are pro se, I'm going
3 to give you plenty of time so that you can speak to
4 NYLAG. And again, there are a lot of defendants
5 here and a lot of issues.

6 I'll give you until April the 10th to file
7 an amended complaint. Okay?

8 MS. AGRA: Okay.

9 MR. AGRA: Yes, Your Honor. Thank you.

10 THE COURT: If you decided not to file an
11 amended complaint, then on or before April 10, you
12 should file something letting us know that you don't
13 intend to file an amended complaint, okay?

14 MS. AGRA: Your Honor, yes.

15 MR. AGRA: Okay, Your Honor.

16 THE COURT: And then here's what I would
17 suggest for the defendant, and I'll hear from the
18 defendant. There are a lot of defendants in this
19 case. It seems that there are some overlapping
20 issues here that the defendants have raised in terms
21 of their anticipated motions to dismiss. I'd like
22 to see if we could perhaps consolidate this briefing
23 instead of having each and every defendant file
24 these motions to dismiss, which will have many
25 overlapping issues.

1 So what I would suggest is, after the
2 amended complaint is filed, we give the defendants
3 some time, let's say until April 19th, to meet and
4 confer and to figure out whether or not there are
5 any efficiencies in terms of filing any consolidated
6 motions to dismiss.

7 We don't need to have a premotion
8 conference at that time. But what I'd like is to
9 get a status report from the defendants on April --
10 let's call it April 20th, letting me know whether or
11 not there is any agreement in terms of filing any
12 sort of consolidated motions to dismiss. And if so,
13 then to propose a briefing schedule -- actually, we
14 don't need to propose a briefing schedule. Just let
15 me know whether or not there's any agreement, and
16 then I will set a briefing schedule, because some of
17 the issues I don't think will be cured by amendment.
18 Some of them might.

19 But let me see how that sounds to -- let's
20 ask it this way. Do any of the defendants object to
21 that? And I'll wait for 10 seconds.

22 Okay. I haven't heard anything. So let's
23 proceed in that way again. Again, let's have that
24 amended complaint or a notice indicating that the
25 plaintiffs don't wish to file an amended complaint

1 by April 10th. And let's have on April 20th, a
2 status report from the defendants discussing how
3 they'd like to proceed in terms of any sort of
4 consolidated motions to dismiss.

5 Is there anything else from the plaintiffs
6 today?

7 MS. AGRA: Actually, Your Honor, yes. We
8 wanted to announce that we will be proceeding with
9 the default judgment. And for that purpose, we were
10 planning to request a clerk's certificate of entry
11 of default for the defendant CBMM at MIT.

12 MR. WINNICK: Okay. Well, let's do this.
13 Let's hold off on that until there's been an amended
14 complaint filed, because obviously, if you file an
15 amended complaint, the defendants would need to be
16 served again. So let's hold off on that for now.
17 Okay?

18 MS. AGRA: Okay, Your Honor.

19 MR. AGRA: Okay, Your Honor.

20 THE COURT: All right. Anything else from
21 any of the defendants?

22 Okay. We are adjourned. Thank you.
23
24
25

C E R T I F I C A T E

I, Marissa Mignano, certify that the foregoing transcript of proceedings in the case of Maciniak-Domingues Goncalves Agra, et al v. Center for Brain, Minds and Machines at Massachusetts Institute of Technology, et al, Docket #1:22-cv-10959-ALC, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Marissa Mignano
Marissa Mignano

Date: March 3, 2023